

July 14, 2008

Senator Edward Kennedy
United States Senate
Washington, D.C. 20510

Senator Michael Enzi
United States Senate
Washington, D.C. 20510

Senator Tom Harkin
United States Senate
Washington, D.C. 20510

Re: S. 1881, The Americans with Disabilities Act Restoration Act of 2007

Dear Chairman Kennedy, Ranking Member Enzi and Sponsor Harkin,

Since 1977 The Association on Higher Education and Disability (AHEAD) has informed higher education's efforts to provide equal access for students with disabilities. On behalf of our 2,300 members, their institutions and the 1.6 million students with disabilities they serve, **we offer our strong support for S. 1881, the ADA Restoration Act of 2007.**

A series of Supreme Court decisions, rendered in the employment context, has inappropriately narrowed the definition of "disability" and shifted the focus away from broad based protections on the basis of disability. Our support for S.1881 rests on our belief that it restores the original intent of the ADA to protect anyone who is treated less favorably because of a current, past, or perceived disability and to balance broad protections from discrimination with reasoned judgments about accommodations.

The Restoration Act restores an appropriate definition of "disability" by clarifying the concept of "substantially limiting" and assuring that the protections of the ADA are available to all individuals who are subjected to adverse treatment based on actual or perceived impairments or a record of impairment or who are adversely affected by prejudiced attitudes. Further, the legislation prohibits consideration of mitigating measures in determining whether an individual has a disability. This return to a broad view of disability, without eliminating individuals on the basis of mitigating measures, is important in the postsecondary environment where establishing eligibility as a student with a disability is often a first step to receiving academic adjustments that allow access.

Changes in the definition of disability will clearly widen the scope of who is protected from discrimination, but protection by the law does not *per se* require service provision. Of primary interest to higher education, the Act does not alter the standards for reasonable accommodation, undue burden, or being otherwise qualified. We do not anticipate a flood of unqualified students requesting and receiving accommodations that would overburden colleges and universities.

Considering whether or not an individual has a disability and determining reasonable accommodations are two distinct processes which the proposed language keeps separate. The accommodation needs associated with the expanded definition will not significantly increase the number of students seeking accommodations or the costs to colleges and universities. Additionally, none of the proposed language will interfere with our institutional obligations to

maintain academic standards. Under the proposed language, determination of accommodation would continue to be based on a case-by-case evaluation of the impact of the disability on the individual in context.

The ADA Restoration Act promises a return to the original protection from discrimination that Congress intended in enacting the ADA without jeopardizing the integrity of higher education or the accommodation process. Therefore, AHEAD encourages the Committee's support of this bill.

The complexities of these issues may merit additional discussions and considerations. The following AHEAD representatives are available for consultation at your convenience:

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AHEAD member
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Sincerely,

Carol Funckes
President

¹ Testifying before the HELP Committee on Tuesday, July 15, 2008